

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

NTECH PROPERTIES, INC.,
Patent Owner.

Case IPR2024-01341
U.S. Patent No. 9,215,261

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

The Board’s decision to deny institution of IPR2024-01341 for U.S. Patent No. 9,215,261 (“’261 Patent”) should not be disturbed because Petitioner failed to meet its burden. As Petitioner readily admits in its Request for Director Review (“Request”), it recycled the same arguments and mappings across four IPRs even though the patents contain different claims elements and have varying scope. This made the Petitions impossible to understand, particularly with regard to the ’261 Patent, because the mapping did not match the claim language. As a result, the Board held that “Petitioner has failed to concretely explain how all of the limitations of independent claim 1 are satisfied by specific teachings in Whitehead arranged in the same way as the claim.” Decision Denying Institution (“Decision”) at 14-15. Because Petitioner did not “articulate a coherent and discernable case,” the Board properly denied institution. *Id.* at 16.

Petitioner’s main argument in its Request is that the Board’s decision should be reversed because the ’261 Patent contains the same claim elements as the ’704 and ’753 Patents. Request at 1. This assertion is demonstrably false. The ’261 Patent recites several elements which are not present in the ’704 and ’753 Patents, including “delivering by an aggregator” “a selectable menu of media feeds” where each “media feed comprises a plurality of media elements selected from audio media elements, visual media elements, and combinations thereof” and where the “media element is tagged in at least one library,” and the additional steps of

receiving, providing, and initiating. *Compare* '261 Patent, Claim 1 with IPR2024-01340 ('704 Patent), IPR2024-01342 ('753 Patent). Indeed, it was Petitioner's failure to map these additional claim limitations that formed the basis for the Board's decision to deny institution. Decision at 14-16. As such, the Board's decision denying institution of the '261 Patent should stand because the '261 Patent contains different claim elements than the '704 and '753 Patents.

In one example, the Board held that Petitioner's mapping of the "initiating" element from the '261 Patent, which is an element that is missing from the '704 and '753 Patents, was incoherent and denied institution on that basis. Specifically, the Board held that Petitioner's mapping of custom media channels to media feeds and as individual customized media programming was "too confusing to follow" and did not address the claim limitations in a "coherent and discernable" manner. Decision at 15-16. This alone is grounds to confirm the Board's decision to deny institution because, contrary to Petitioner's arguments, the Board held that claim language from the '261 Patent that is not found in the claims of the '704 and '753 Patents was not properly mapped.

Rather than grapple with the Board's decision, Petitioner deceptively rewrites the Board analysis in its Request. As noted above, the Board held that Petitioner did not coherently map the "initiating" element recited in the '261 Patent. Petitioner's response to this fatal fact was to rewrite the Board's Institution

Decision for '753 Patent and plop it into Petitioner's Request as an alleged quote. Specifically, Petitioner quotes the Board's Institution Decision for the '753 Patent but replaces the "**providing**" claim language from '753 Patent with the "**initiating**" claim language from the '261 Patent and argues that the Board understood Petitioner's mapping of the "initiating" element. *Compare* IPR2024-01342, Institution Decision at 9 *with* Request at 6. Petitioner's deceptive tactic highlights that the Board did not agree with Petitioner's mapping of the "initiating" element for the '261 Patent because Petitioner was forced to manipulate the record. In any case, a fabricated quote is not grounds to reverse the Board's decision.

In another example, NTECH demonstrated that Petitioner's mapping of customized media programming that includes media feeds and elements was paradoxical in nature. Prelim. Resp. at 7; *see also* Decision at 13-14. The Board agreed and held that Petitioner had failed to meet its burden noting the claims require customized media programming and media feeds that contain media elements which was not mapped to any disclosure in Whitehead. Decision at 14. Because the Board's decision rests upon claim elements that are not recited in the '704 and '753 Patent, Petitioner's arguments fall flat.

Petitioner's assertion that the Board "refused to consider Petitioner's mappings for the claimed 'media feeds'" contradicts the record. Request at 1. The Board provided four pages of analysis of Petitioner's "media feeds" argument and

ultimately decided that Petitioner's argument did not meet the statutory requirements. Decision at 13-16. Petitioner's ignorance of the record and its disagreement with the Board's decision are not grounds for reversal.

In addition, the Board properly found that Petitioner did not adequately explain how Whitehead discloses a selection provided by a media player as required by the claims of the '261 Patent. The Board held, as a factual matter—"the purported client device (media player 115) is a TV or monitor that displays menus, whereas the selection of programming is performed by a remote control." Decision at 12-13. Rather than provide an explanation of how the TV or monitor has the capability of selecting a program, or how the set top box receives a media feed selection from the TV or monitor, Petitioner provided a lengthy string cite in its Petition. Petition at 21. The Board held that a string cite is not "an adequate substitute for an explanation in the Petition" and declined to hunt for Petitioner's rationale. Decision at 12-13.

Petitioner's argument that the Board did not consider the embodiment where the computer is a client device is also contrary to the record. Indeed, the Board held that "[w]e acknowledge that Petitioner also identifies computer 105 . . . as a 'client device.'" *Id.* at 13. However, the Board rejected that mapping because Petitioner did not contend that the purported aggregator delivers a list to that

computer or receives a selection from the computer as required by the claims of the '261 Patent.

Furthermore, Petitioner's argument that NTECH did not raise the issue in its Preliminary Response is a red herring. Request at 8. The burden lies on Petitioner to establish a reasonable likelihood of success on every claim element, regardless of whether NTECH raised it or not in the Preliminary Response. Petitioner's attempt to shift the burden to NTECH should be ignored.

Petitioner's Request should also be denied because it contains new arguments and evidence that was not cited in the Petition. As the Director knows, absent authorization, Petitioner is not allowed to introduce new evidence or arguments in a Request for Director Review. USPTO, Director Review Process, <https://www.uspto.gov/patents/ptab/decisions/director-review-process> at 3(E) (citing 37 C.F.R. § 42.75(c)(3)). Despite this rule, Petitioner includes several new citations to Whitehead to advance new arguments in its Request. For example, Petitioner points to an "initial, user-selected menu item corresponding to a profile 160" as a media feed, while the Petition identifies profile 160 as "user information" rather than a media feed. *Compare* Request at 7 *with* Petition at 30. Petitioner's shifting sands arguments are not allowed, and only bolsters the Board's conclusion that the Petition was deficient on many levels.

Authorized Response to Director Review Request
IPR2024-01341 (U.S. Patent No. 9,215,261)

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) and e-mailing an electronic copy to counsel of record for Petitioner constitutes electronic service, service was made on Petitioner as detailed below.

<i>Date of service</i>	April 17, 2025
<i>Manner of service</i>	Electronic Filing and Electronic Mail (jimglass@quinnemanuel.com; ogizivojnovic@quinnemanuel.com; qe-bytedance-ntech-iprs@quinnemanuel.com)
<i>Documents served</i>	AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST
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